

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHIGAN ASS'N OF PUBLIC SCHOOL ACADEMIES, et al.)	
)	Case No. 2:24cv00112
Plaintiffs)	
)	Hon. Michael H. Watson
v.)	U.S. District Court Judge
)	
U.S. DEPARTMENT OF EDUCATION, et al.)	Hon. Chelsey M. Vascura
)	U.S. Magistrate Judge
Defendants)	

**U.S. DEPARTMENT OF EDUCATION DEFENDANTS' UNOPPOSED MOTION TO
VACATE APRIL 23, 2024, NOTICE**

Defendants U.S. Department of Education (“Department”); Miguel Cardona, Secretary of Education; and Ruth E. Ryder, Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education, request that the Court vacate the April 23, 2024, Notice, ECF No. 38, which set a preliminary pretrial conference for May 14, 2024, and called for a report under Rule 26(f) of the Federal Rules of Civil Procedure. This case is exempt from Rule 26(f) because it is “an action for review on an administrative record,” Fed. R. Civ. P. 26(a)(1)(B)(i). The Government believes the next step in the case should be for the Court to rule on the part of the Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction, ECF No. 19, that has not yet been resolved.

This case was originally filed in August 2022 in the District Court for the Western District of Michigan. The First Amended Complaint, ECF No. 17, asserts claims for judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706, challenging rules adopted by the Department in July 2022 that established priorities, requirements, and selection criteria for federal grants under three programs that are part of the Department’s Expanding Opportunity Through Quality Charter Schools Program (CSP).

In November 2022, the Government filed Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction, arguing that the court should dismiss the case because the plaintiffs failed to meet the jurisdictional requirement of standing. In December 2023, the Michigan court granted the motion to dismiss with respect to three of the five plaintiffs in the action, but it did not rule on the motion to dismiss with respect to the two remaining plaintiffs. Am. Order Resolving Mot. to Dismiss to Correct Scrivener’s Error, ECF No. 29 at PageID 232. The Michigan court transferred the case to this Court for further proceedings. *See* Order Transferring Venue, ECF No. 30.

The Government believes the next step in this case should be for the Court to rule on the Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction with respect to the remaining two plaintiffs, Thomas B. Fordham Institute (Fordham) and West Virginia Professional Charter School Board (WVPCSB), based on the briefing previously submitted in the District Court for the Western District of Michigan.

The Government requests that the Court vacate the April 23, 2024, Notice, ECF No. 38. This case is exempt from the requirements of Rule 26(f) as “an action for review on an administrative record,” Fed. R. Civ. P. 26(a)(1)(B)(i). *See* Fed. R. Civ. P. 26(f)(1) (specifying that the Rule 26(f) conference requirement does not apply “in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B)”). Furthermore, the motion to dismiss raises issues of subject matter jurisdiction, and the Court should not conduct further proceedings before those issues have been resolved. *See, e.g., Akno 1010 Mkt. St. St. Louis Mo. LLC*, 43 F.4th 624, 627 (6th Cir. 2022) (“[L]itigants and district courts must assure themselves of subject-matter jurisdiction at the earliest possible moment . . .”).

The Government conferred with the plaintiffs regarding this motion, and the plaintiffs indicated that the motion is unopposed.

Date: April 26, 2024

Respectfully submitted,

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